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EDWARD M. WOODWARD, SR.
(1921-2000)

September 28, 2005

The Honorable Charles L. A. Terreni
Executive Director
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

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SC PUBLIC SERVICE
COMMISSION

Re: Generic Proceeding to Explore a Formal Request for Proposal for Utilities that are
Considering Alternatives for Adding Generating Capacity
Docket No. 2005-191-E
Our File No. 05-7051

Dear Mr. Terreni:

Enclosed are the original and twenty-six copies of the Testimony of Lawrence J. Willick. Would you please file the two original documents, returning a clocked copy to me by way of our courier. We will be filing a Motion for Substitution of Counsel tomorrow. Attached is a copy of such Motion.

By copy of this letter I am serving all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

Darra W. Cothran

Darra W. Cothran
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DWC/bjd

Enclosures.

cc: Len S. Anthony, Esquire
Kendal Bowman, Esquire
Richard L. Whitt, Esquire
Frank R. Ellerbe III, Esquire
Shannon Bowyer Hudson, Esquire
Belton T. Zeigler, Esquire
Patricia B. Morrison, Esquire
Scott Elliott, Esquire

RETURN DATE: *PK*
SERVICE: *OK*

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-191-E**

In Re: Generic Proceeding to Explore)
a Formal Request for Proposal for)
Utilities that are Considering Alternatives)
for Adding Generating Capacity)

TESTIMONY OF LAWRENCE J. WILICK

on behalf of

LS POWER DEVELOPMENT, LLC

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1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Lawrence J. Willick. My business address is 400
3 Chesterfield Center, Suite 110, St. Louis, Missouri 63017.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by LS Power Development, LLC ("LS Power"), the
6 general partner of LS Power Associates, L.P. My title is Assistant Vice
7 President.

8 **Q. WHAT IS YOUR EDUCATIONAL EXPERIENCE AND BACKGROUND?**

9 A. I have 13 years experience in the electric power industry. I have a
10 Bachelors of Science in Engineering, summa cum laude, and a Masters in
11 Business Administration, both from Tulane University. From 1992 to
12 1996, I was a consultant on commercial and industrial marketing projects
13 for investor-owned utilities. Since 1996, I have been employed by LS
14 Power and its predecessors in various positions. At LS Power, I have
15 been involved in the site selection, permitting, development, marketing,
16 financing and management of independent power projects.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. My testimony addresses the generic proceeding instituted by the
19 Public Service Commission of South Carolina ("Commission") in Docket
20 2005-191-E to explore a formal request for proposal ("RFP") for utilities
21 that are considering alternatives for adding generating capacity.

22 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

1 A. The Commission should adopt rules requiring utilities to implement
2 a formal RFP process when they are considering alternatives for adding
3 any type of new generating capacity. Keeping with the goal of ensuring
4 South Carolina electric utility customers obtain the best possible deal in
5 terms of price, risk, reliability, and environmental performance, LS Power
6 urges the Commission to adopt competitive solicitation rules featuring a
7 fair, open and transparent process that is well-defined with standardized
8 evaluation criteria and independent third-party oversight. These standards
9 will assure the results of any competitive solicitation process are credible
10 and the best supply source option is selected.

11 **Q. WHY SHOULD THE COMMISSION ADOPT RULES REQUIRING**
12 **COMPETITIVE BIDDING?**

13 A. Without such rules, South Carolina ratepayers in a given service
14 area will be relying solely on the incumbent utility for new supply
15 resources. A competitive bidding process encourages other parties to
16 develop alternatives, and having more alternatives available increases the
17 chances of identifying a supply resource which is better than the utility
18 resource. Competitively testing and evaluating the reasonableness of a
19 utility self-build proposal against non-utility proposals under an RFP
20 process is the most effective means to determine whether the needs of
21 South Carolina ratepayers are met reliably and at the lowest-cost. Without
22 an unbiased competitive procurement process which evaluates the
23 broadest spectrum of marketplace options, there can be no assurance that

1 a utility generating proposal is the best, low-cost, and reliable choice for
2 ratepayers.

3 **Q. HAVE THERE BEEN ANY STUDIES IDENTIFYING THE BENEFIT OF**
4 **WHOLESALE ELECTRIC COMPETITION?**

5 A. Several studies have estimated consumers have saved billions of
6 dollars due to wholesale electric market competition. A study by Global
7 Energy Decisions placed the savings at \$15.1 billion from 1999-2003
8 ("Putting Competitive Power Markets to the Test", July 2005).

9 This Global Energy Decisions study, as well as studies from the
10 Department of Energy, the EPA, and Standard and Poor's have noted
11 competition has benefited consumers by providing incentives to
12 generators to dramatically improve their own operating efficiencies,
13 resulting in improved environmental performance and reliability of
14 generating facilities (Electric Power Supply Association Memo on the
15 Benefits of Competition).

16 **Q. DO YOU BELIEVE THAT A NON-UTILITY CAN OFFER A LOWER-**
17 **COST, MORE RELIABLE OPTION IN RESPONSE TO AN RFP IN**
18 **SOUTH CAROLINA?**

19 A. Yes. In response to RFPs in other states, non-utilities have crafted
20 bids which offer savings compared to utilities. This is possible because
21 each potential new supply resource has different construction costs, site
22 specific costs, and financing costs. In addition, non-utilities have provided
23 unit efficiency and availability guarantees in their bids, insulating

1 ratepayers from performance risks associated the generating facility. It
2 may be the case that the utility proposed generating facility is best, or a
3 non-utility resource may prove to be superior. However, absent a
4 competitive solicitation to determine the lowest-cost, most reliable option
5 for South Carolina, there is no way to credibly determine what option is
6 best for the state's ratepayers.

7 **Q. WHAT ARE THE CONSEQUENCES OF AN IMPROPRELY**
8 **STRUCTURED SOLICITATION PROCESS?**

9 A. In its 2004 *Mountainview* decision, the Federal Energy Regulatory
10 Commission ("FERC") noted it was "concerned that granting undue
11 preference to [utility] affiliates, whether through cost-based or market-
12 based transactions, could cause long-term harm to the wholesale
13 competitive market. Affiliate preference could discourage non-affiliates
14 from adding supply in the local area, harming wholesale competition and,
15 ultimately, wholesale customers." I would agree with the FERC that failure
16 to assure the integrity of procurement procedures could depress
17 competition and deny ratepayers the benefits of a robust competitive
18 marketplace, resulting in higher wholesale and ultimately retail prices in
19 South Carolina.

20 **Q. ARE THERE SPECIFIC PRINCIPLES YOU RECOMMEND THE RFP**
21 **PROCESS FOLLOW?**

22 A, Yes. I would recommend the Commission adopt rules which
23 correspond with the guidelines the FERC laid out in its 2004 *Ameren*

1 decision which stated an RFP involving affiliate assets must have four
2 core attributes:

3 **Transparency** – The competitive solicitation process should be
4 open and fair, no party should have an informational advantage in any part
5 of the solicitation process, and bidding under the process should be open
6 to all interested parties.

7 **Product Definition** –The product or products sought through the
8 RFP process should be defined in a manner that is clear and non-
9 discriminatory, including specifications of the desired capacity, term, and
10 transmission requirements.

11 **Evaluation** – The RFP evaluation criteria should be standardized
12 and applied to all bids and bidders. The criteria should be made available
13 to all bidders as part of the RFP in order to allow them to best craft
14 proposals to fit the stated need.

15 **Oversight** – An RFP process should include the use of an
16 independent third-party to design, administer, and evaluate the process,
17 and to ensure the RFP process is transparent, fair, and not influenced by
18 any affiliate relationships.

19 **Q. WHY IS INDEPENDENT THIRD-PARTY OVERSIGHT AND**
20 **EVALUATION IMPORTANT?**

21 **A.** In order to encourage participation in the process and ensure the
22 best alternative is selected, independent third-party oversight is
23 necessary. Independent third-party oversight addresses conflict of

1 interest issues that may arise if a utility or utility affiliate submits a proposal
2 for consideration. By ensuring the solicitation process is not biased in
3 favor of any party, the independent evaluator adds credibility to the entire
4 process. If bidders are assured the process is credible, they are more
5 likely to submit proposals, thereby increasing the number of options
6 potentially available to ratepayers.

7 Without third-party evaluation, there is the possibility the utility
8 selects its own proposal over a superior alternative. Moreover, an
9 independent evaluator provides Commissioners and staff with logistical
10 and technical assistance during the process.

11 **Q. HOW SHOULD RFP BID EVALUATION RULES BE DETERMINED?**

12 A. Bid evaluation rules should be determined through a collaborative
13 process of interested stakeholders, including market participants,
14 commission staff and the utility. The process should be guided by the
15 independent third-party monitor who can facilitate consensus among
16 participants on the bid evaluation rules.

17 **Q. ARE THERE ANY SPECIFIC BID EVALUATION RULES YOU**
18 **RECOMMEND FOR INCLUSION IN A POTENTIAL RFP?**

19 A. I will refrain from offering specific recommendations of bid
20 evaluation rules at this point, but rather reassert that any potential
21 evaluation rules should comport with the aforementioned principle that
22 evaluation criteria should be standardized to apply to all bids and bidders.

1 **Q. SHOULD THERE BE ANY RESTRICTION ON THE TYPES OF**
2 **RESOURCES THAT ARE EVALUATED THROUGH AN RFP**
3 **PROCESS?**

4 A. No. An RFP process should be used for all resource types, be they
5 peaking, intermediate, or baseload. The benefits of an RFP process apply
6 to any type of new generating capacity, and it is not prudent to prejudge
7 what type of resource may be most beneficial prior to conducting the RFP.

8 **Q. WHAT ARE YOU ASKING THE COMMISSION TO DO?**

9 A. In order to ensure the lowest-cost, most reliable generation option
10 for ratepayers, the Commission should adopt rules requiring utilities to
11 implement a formal RFP process for all resource types when they are
12 considering alternatives for adding generating capacity. To preserve the
13 credibility of the process and guarantee the widest possible universe of
14 generation options, the RFP process should be fair, open, and
15 transparent, with standardized evaluation criteria and independent third-
16 party oversight.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes.

CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for LS Power Associates, L.P., do hereby certify that I have served a copy of the Testimony of Lawrence J. Willick by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

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Joseph Melchers, Esquire
The Public Service Commission
State of South Carolina
Post Office Drawer 11649
Columbia, S.C. 29211

Betty J. DeHart
Betty J. DeHart

SWORN to before me this

28th day of September, 2005.

Kimberly Meier (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/08/08

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OF SOUTH CAROLINA
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MOTION TO SUBSTITUTE
COUNSEL

LS Power Associates, L.P. moves for a substitution of counsel, and requests that Kevin A. Hall and D. Larry Kristinik of Nelson Mullins Riley & Scarborough, LLP be relieved as counsel in this action and that Darra W. Cothran of Woodward, Cothran & Herndon be substituted as the attorney of record for LS Power Associates, L.P.

Dated this 28 day of September, 2005.

Woodward, Cothran & Herndon

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